

228 977

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB FINANCE DOCKET NO. 35465

ENTERED
Office of Proceedings
MAR 11 2011
Part of
Public Record

**AUTAUGA NORTHERN RAILROAD, L.L.C.
- LEASE AND OPERATION EXEMPTION -
NORFOLK SOUTHERN RAILWAY COMPANY**

PETITION TO STAY

In accordance with the procedures in 49 C.F.R. Part 1150 and 49 C.F.R. 1117.1, International Paper Company ("IP") respectfully requests that the Board stay the effectiveness of the exemption sought by Autauga Northern Railroad, L.L.C. ("ANRR") to lease and operate approximately 46 miles of track owned by Norfolk Southern Railroad Company ("NS") and its incidental trackage rights over approximately 10 miles of rail line owned by CSX Transportation, Inc. ("CSX"). IP has concerns as to whether the ANRR will be able to provide the quality and quantity of service required to it and other rail served shippers. IP is accordingly requesting that the Board stay the exemption for a period sufficient to permit ANRR and/or NS to supplement the Notice of Exemption to provide information adequate to determine whether ANRR has the financial and physical assets required to provide service on the lines that are the subject of the Notice of Exemption.¹

¹ In F.D. No. 35464, *Watco Holdings, Inc. - - Continuance in Control Exemption - - Autauga Northern Railroad, L.L.C.*, Watco Holdings, Inc. filed a Notice of Exemption on February 17, 2011 to continue and control ANRR once ANRR becomes a Class II railroad. Under the circumstances, it is appropriate that the transaction in F.D. No. 35464 should also be subject to a stay issued as to the transaction in this docket between ANRR and the NS.

International Paper Company is the largest manufacture of paper and paper products in the United States and operates from a number of mills and other facilities in various locations around the country. As relevant here, IP owns and operates a large mill at Prattville, Alabama, which is located on the line of track that is presently owned and operated by NS between Maplesville and Montgomery, Alabama. IP is heavily dependent on rail transportation to move its outbound goods to various destinations around the country. For example, in 2010, NS transported over 5,000 outbound boxcar shipments for IP, and IP's anticipates that its outbound rail shipments will substantially exceed that number in 2011. Consequently, IP is vitally interested in knowing that the railroad serving this facility is fit, willing and able to provide safe, reliable and adequate service.

Unfortunately, the Notice of Exemption provides no information that would even suggest, let alone demonstrate, that ANRR is competent to fill the void that will be left by NS' decision to transfer its responsibilities to this new entity. In that regard, the Notice of Exemption states only that the ANRR is a new company that "will immediately make investments to upgrade the leased lines so as to improve the long term viability of these lines." However, the Notice of Exemption provides no details about ANRR's financial viability; there is no description of its financing, balance sheet, projected income, ability to fund any maintenance, let alone upgrades on the lines, or how the transaction is being financed. Similarly, the Notice of Exemption is devoid of any description of an operating plan, how and where employees will be obtained, what equipment it intends to operate and how that will be obtained, how it expects to be able to provide necessary boxcars, or how often it will serve IP or other shippers.

IP recognizes that the exemption procedure in 49 C.F.R. Part 1150.31 does not typically require that new carriers of rail property being acquired from other railroads provide all of the

detailed information that is specified for applications under 49 C.F.R. § 10901. In promulgating the class exemption in Section 1150.31, the Interstate Commerce Commission noted that providing detailed financial and operating data was not normally germane in many proceedings particularly because those affected by the transaction usually “. . . are, in fact, well aware of the financial condition of the potential acquirer, expected traffic revenues, volumes and commodities, as well as intended operation.” *Class Exemption - - Acq. & Oper. of R. Lines under 49 U.S.C. 10901*, 1 I.C.C. 2d 810, 817 (1985). Clearly, that is not the case here, as neither the Board nor IP (or any other shipper) has any information concerning ANRR or its ability to provide appropriate service on this line.

Yet, the issue of service on this line has in recent years become significantly problematic due to NS service deficiencies. In 2009, NS provided this mill with 6 to 7 switches per week and generally filled 100% of IP's boxcar needs. The situation has significantly deteriorated since then. In February 2010, NS' service and ability to supply boxcars began to decline precipitously, so that IP has held numerous meetings through the end of the year with NS Senior Management to discuss the service failures and attempt to get those issues resolved. NS blamed the service failures on crew shortages and advised IP that normal service levels would return by the end of the year. That was not the case.

In early December 2010, the 43 miles of track that is the subject of the Notice of Exemption was inspected by the Federal Railroad Administration and found to be in such poor condition that speeds were reduced to 10 miles an hour. This reduction in speed further adversely affected the crew hours, which, in turn, had the affect of reducing switching IP to only 3 times per week. Consequently, although IP has been complaining about the poor track conditions with its reduced speeds, and while NS is well aware that the track needed

maintenance, NS has never provided any plan or timeline to repair the track. The result? While NS essentially fulfilled 100% of IP's boxcar orders in 2009, that number dropped to 79.7% in 2010.

This situation has further deteriorated in 2011. In January, NS' car supply order fulfillment was down to 53%, and this declined even further to only 48% in February. And, notwithstanding IP's needs, NS is still only switching the mill 3 times a week, and the 43 miles of line are still under an FRA ordered speed reduction. This is an intolerable situation.

IP has ample reason to be concerned that the proposed transaction may further degrade service to its Prattville mill. In discussing the transaction with IP, NS indicated that the ANRR would be a "handling" line, but that NS would continue to manage the car ordering, rebilling, customer service and pricing processes relating to line haul transportation for IP's mill. However, it has provided no explanation as to whether the ANRR would have the financial resources to rehabilitate the line, whether ANRR would switch IP's mill in a manner consistent with its needs, whether NS or ANRR would provide IP with sufficient boxcars to satisfy its obligations to furnish adequate service or whether IP would instead need to look to the ANRR, or whether there were any so-called "paper barriers" on ANRR that would restrict its service as an independent rail carrier.

It may well be that the proposed transaction will be beneficial and improve the quality of the service that is provided on this line. But, there is no basis established in this record that would warrant that conclusion, and neither NS nor ANRR has provided any such assurances to IP. In view of the mounting service problems and worsening track condition along this line, it is incumbent on the NS and ANRR to come forward with information sufficient to show that the proposed arrangements are in fact in the public interest.

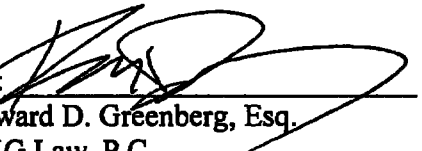
The situation confronted by IP is similar to the facts in F.D. 35002, *Savage Bingham & Garfield Railroad Company - - Acquisition and Operation Exemption - - Union Pacific Railroad Company* (served March 28, 2007) where the STB granted the requested stay in order to provide the Board time to determine whether the would-be carrier in that transaction would be able to meet its obligations to the rail shippers and receivers who use that line. See also, F.D. 35020, *Northern & Bergen Railroad, L.L.C. - - Acquisition Exemption - - A Line of Railroad Owned by New York & Greenwood Lake Railway* (decision served May 25, 2007) (stay issued to permit parties to determine whether the would-be carrier would be operating “as a legitimate rail carrier” and otherwise comply with applicable health and safety regulations).

IP is not opposing the transaction or seeking an indefinite stay. Rather, it is requesting only that the Board issue a brief stay that would enable ANRR and NS to provide information sufficient to show that ANRR would be able to meet its obligations to IP and other rail users to provide reasonable rail freight service, rehabilitate the track, resume providing adequate switching service and provide adequate car supply. ANRR and NS have not provided any substantive information on these points, so that it is impossible for the Board to determine the merits of the transaction. It is clear, however, that if ANRR is undercapitalized or otherwise unable, in conjunction with NS, to restore adequate service to IP to something approaching the levels of service in 2009, IP would be irreparably harmed by permitting the transaction to go forward. On the other hand, granting a modest stay to would permit the applicants to provide relevant information would not appear to constitute significant harm to those parties. Under the circumstances, as there are no other parties who would be substantially harmed by a grant of a temporary stay, and since the public interest clearly supports ensuring that the transaction will

not result in any further degradation of essential rail service along this line, it is both appropriate and essential for the Board to grant the requested stay.

Accordingly, IP requests that the Board issue a temporary stay of the transaction in order to provide the ANRR and NS to provide information that the ANRR has the financial strength necessary to provide service, that its proposed operating plan will meet the needs of the shippers, and that NS will provide cars to the shippers on the line in a manner that is commensurate with their needs.

Respectfully Submitted,

By: 
Edward D. Greenberg, Esq.
GKG Law, P.C.
1054 Thirty-First Street, NW
Washington, DC 20007-4492
Phone: (202) 342-5277


Attorney for
International Paper Company

Dated: March 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that I have this 11th day of March, 2011, served a copy of the foregoing Petition to Stay on the following persons listed below via first-class mail, postage pre-paid:

Karl Morell
Ball Janik LLP
Suite 225
1455 F Street, N.W.
Washington, D.C. 20005



Edward D. Greenberg